Petition and Transcript of Record

Supreme Court of the United States

OCTOBER TERM, 1930

No. 103

HARRY F. WAITE, PETITIONER,

vs.

THE UNITED STATES

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

PETITION FOR CERTIORARI FILED MAY 7, 1930

CERTIORARI GRANTED OCTOBER 13, 1930

(35,010)

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[fol. 1]

IN SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1930

No. 103

HARRY F. WAITE, Petitioner,

vs.

THE UNITED STATES, Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, Harry F. Waite, Prays that a writ of certiorari be issued to the United States Court of Claims to review the decisions of said court rendered February 10th, 1930 and April 7th, 1930, which appear in the transcript of record filed herewith.

The sole and entire issue in this case is whether or not compensation for delay should be allowed on an award of $6,001.42 in a patent infringement case where a reasonable royalty has been established at the rate of $59.42 as of June 15th, 1922. In the Richmond Screw Anchor Company case, reported in 67 Court of Claims 63, the court acted pursuant to a mandate from this court and allowed such compensation for delay. There was a recovery of $25,527.80, of which $16,200.00 was a reasonable royalty at the rate of $20.00 a beam, and the balance representing compensation for delay, or interest. Such a recovery is according to the decision of this court in the case of Phelps v. United States, 274 U. S. 341.

In the case at bar, the Court of Claims refused to follow the ruling in the Richmond Screw Anchor case, and has refused to allow compensation for delay or interest. This is the alleged error on which this petition is based.

[fols. 2 & 3] The matter of compensation for delay has never been passed upon by this Court in a patent case, al-

though it has been passed upon as to other kinds of cases cited in Phelps v. United States, (supra).

Wherefore, because of the gravity and importance of the question involved, your petitioner respectfully prays that a writ of certiorari may be issued out of and under the seal of this Honorable Court directed to the judges of the Court of Claims of the United States, commanding that court to certify and send to this court for its review and determination, on a day certain to be named therein, a full and complete transcript of the record and all proceedings of such Court of Claims in the case, lately pending therein on its docket, No. 129-B, wherein Harry F. Waite is petitioner and the United States is the defendant, and that the said decision of the United States Court of Claims may be reversed by this Honorable Court as to the matter of compensation for delay or interest, and that your petitioner may have such other and further relief as to this Court may seem meet and just, and

Your petitioner will ever pray.

Harry F. Waite, Petitioner, by O. Ellery Edwards, Solicitor for Petitioner. Joseph W. Cox, of Counsel for Petitioner.

Dated April 30th, 1930.

As a member of the bar of this Court, I hereby certify that I have examined the foregoing petition and in my judgment it is well founded and the cause is one in which the prayer of the petition may properly be granted by this Court.

O. Ellery Edwards.

Dated April 30th, 1930.

[fol. 1] IN UNITED STATES COURT OF CLAIMS

B-129

HARRY F. WAITE, Petitioner,

vs.

THE UNITED STATES, Defendant

On Patents Nos. 1,343,599, 1,371,011, and 1,400,333 and 1,420,395

I. PETITION—Filed June 27, 1922

To the Honorable the Judges of the United States Court of Claims:

The Petition of Harry W. Waite, respectfully represents:

I. That your petitioner is a citizen of the United States, and is a resident of the City of New York, County of Queens and State of New York, United States of America; and brings this action in his own right.

II. That this petition is filed against the United States under and pursuant to the provisions of the Act of Congress, approved June 25, 1910, entitled "An Act to Provide Additional Protection for the Owners of Patents of the [fol. 2] United States and for Other Purposes" as amended by the Act of Congress, approved July 1, 1918.

III. That heretofore and before the 6th day of October, 1917, your petitioner was the true original and first inventor of certain new and useful improvements in X-Ray System, not known or used by others in this country before his invention or discovery thereof, not patented or described in any printed publication in this or any foreign country before his invention or discovery thereof, or more than two years prior to his application for a patent in this country therefor, not patented in any country foreign to the United States on an application filed by him or his legal representatives or assigns more than twelve months prior to said application for patent in this country, and not in public use or on sale in this country for more than two years prior to his said application for patent in this country; and so being

the true, original and first inventor thereof, your petitioner made due application, according to law, for Letters Patent of the United States therefor; and, on the 15th day of June, 1920, upon his said application and in conformity to law, Letters Patent, in the name of the United States of America, dated June 15th, 1920, No. 1,343,599, duly executed and recorded, sealed with the seal of the Patent Office and signed by the Commissioner of Patents according to law, were duly granted to your petitioner, whereby there was granted and secured or intended to be granted and secured to your petitioner, his heirs and assigns, for the [fol. 3] term of seventeen years from and after the said 15th day of June, 1920, the exclusive right to make, use and vend throughout the United States and Territories thereof, the invention aforesaid, a description whereof, in the words of your petitioner, was given in the schedule annexed to said Letters Patent and made a part thereof, as by reference to said Letters Patent, or to a duly authenticated copy thereof, here in Court to be produced, will more fully and at large appear.

IV. That heretofore and before the 10th day of August 1920, your petitioner was the true original and first inventor of certain new and useful improvements in Automatic Clamp for Bracket Supports, not known or used by others in this country before his invention or discovery thereof, not patented or described in any printed publication in this or any foreign country before his invention or discovery thereof, or more than two years prior to his application for a patent in this country therefor, not patented in any country foreign to the United States on an application filed by him or his legal representatives or assigns more than twelve months prior to said application for patent in this country, and not in public use or on sale in this coun-ry for more than two years prior to his said application for patent in this country; and so being the true, original and first inventor thereof, your petitioner made due application, according to law, for Letters Patent of the United States therefor; and on the 8th day of March, 1921, upon his said application and in conformity to law, Letters Patent, in the name of the United States of America, dated [fol. 4] March 8th, 1921, No. 1,371,011, duly executed and

recorded, sealed with the seal of the Patent Office and signed by the Commissioner of Patents, according to law, were duly granted to your petitioner, whereby there was granted and secured or intended to be granted and secured to your petitioner, his heirs and assigns, for the terms of seventeen years from and after the said 8th day of March, 1921, the exclusive right to make, use and vend throughout the United States and Territories thereof, the invention aforesaid, a description whereof, in the words of your petitioner, was given in the schedule annexed to said Letters Patent and made a part thereof, as by reference to said Letters Patent, or to a duly authenticated copy thereof, here in Court to be produced, will more fully and at large appear.

V. That heretofore and before the 20th day of November, 1920, your petitioner was the true, original and first inventor of certain new and useful improvements in Fluoroscopic X-Ray System, not known or used by others in this country before his invention or discovery thereof, not patented or described in any printed publication in this or any foreign country before his invention or discovery thereof, or more than two years prior to his application for a patent in this country therefor, not patented in any country foreign to the United States on an application filed by him or his legal representatives or assigns more than twelve months prior to said application for patent in this country, and not in public use or on sale in this country for more than two years prior to his said application for patent in [fol. 5] this country; and so being the true, original and first inventor thereof your petitioner made due application, according to law, for Letters Patent of the United States therefor; and, on the 13th day of December, 1921, upon his said application and in conformity to law, Letters Patent, in the name of the United States of America, dated December 13th, 1921, No. 1,400,333, duly executed and recorded, sealed with the seal of the Patent Office and signed by the Commissioner of Patents, according to law, were duly granted to your petitioner, whereby there was granted and secured or intended to be granted and secured to your petitioner, his heirs and assigns, for the term of seventeen years from and after the said 13th day of December, 1921,

the exclusive right to make, use and vend throughout the United States and territories thereof, the invention aforesaid, a description whereof, in the words of your petitioner, was given in the schedule annexed to said Letters Patent and made a part thereof, as by reference to said Letters Patent, or to a duly authenticated copy thereof, here in Court to be produced, will more fully and at large appear.

VI. That heretofore and before the 20th day of November, 1920, your petitioner was the true, original and first inventor of certain new and useful improvements in Fluoroscopic Units, not known or used by others in this country before his invention or discovery thereof, not patented or described in any printed publication in this or any foreign country before his invention or discovery thereof, or more then two years prior to his application for a patent in this [fol. 6] country therefor, not patented in any country foreign to the United States on an application filed by him or his legal representativs or assigns more than twelve months prior to said application for patent in this country, and not in public use or on sale in this country for more than two years prior to his said application for patent in this country; and so being the true, original and first inventor thereof your petitioner made due application, according to law, for Letters Patent of the United States therefor; and, on the 20th day of June, 1922, upon his said application and in conformity to law, Letters Patent in the name of the United States of America, dated June 20th, 1922, No. 1,420,395, duly executed and recorded, sealed with the seal of the Patent Office and signed by the Commissioner of Patents, according to law, were duly granted to your petitioner, whereby there was granted and secured or intended to be granted and secured to your petitioner, his heirs and assigns for the term of seventeen years from and after the said 20th day of June, 1922, the exclusive right to make, use and vend throughout the United States and Territories thereof, the invention aforesaid, a description whereof, in the words of your petitioner, was given in the schedule annexed to said Letters Patent and made a part thereof, as by reference to said Letters Patent, or to a duly authenticated copy thereof, here in Court to be produced, will more fully and at large appear.

VII. That your petitioner has never assigned, nor granted any right, title or interest, whatsoever, in or to the said inventions, or in or to said Letters Patent Nos. [fol. 7] 1,343,599, 1,371,011, 1,400,333 and 1,420,395, but still holds and owns the entire exclusive right, title and interest in and to said inventions and Letters Patent, and in and to all rights of action for the past or future infringement of the said Letters Patent.

VIII. That your petitioner is advised and believes, and therefore avers that said Letters Patent Nos. 1,343,599, 1,371,011, 1,400,333 and 1,420,395 are valid and effective in law to secure to your petitioner the exclusive rights and privileges thereby granted; that so far as your petitioner is informed and believes, the public generally have acquiesced in your petitioner's rights under said Letters Patent; that your petitioner is entitled to the exclusive use and enjoyment of said inventions and of said Letters Patent; and that, but for the infringements hereinafter complained of, your petitioner would have been and would now be, in the undisturbed possession use and enjoyment of the said inventions and of the said exclusive rights and privileges and in receipt of the profits of the same.

IX. That the inventions covered and claimed in said Letters Patent Nos. 1,343,599, 1,371,011, 1,400,333 and 1,420,395 were not invented or discovered by your petitioner, while an employee of the Government of the United States, nor during the time of his employment or service by or for the Government of the United States, nor is your petitioner now in the employment or service of the Government of the United States.

X. That your petitioner is informed and believes, and [fol. 8] therefore avers, that the United States, through the officers and employees of its War and Navy Departments, and otherwise has since the grant of said Letters Patent Nos. 1,343,599, 1,371,011, 1,400,333 and 1,420,395, and before the filing of this petition without the license of your petitioner, or without lawful right, made and constructed or caused to be made and constructed and used, or caused to be used, X-ray apparatus containing and embodying the invention covered and claimed by said Letters Patent Nos.

1,343,599, 1,371,011, 1,400,333 and 1,420,395 and all claims of each of said Letters Patent, in violation and infringement of said Letters Patent and of the rights of your petitioner thereunder; that such unlawful and unauthorized use of your petitioner's said inventions has resulted in great injury, damage and loss to your petitioner, to wit, as your petitioner is informed and believes and, therefore avers, the aggregate sum of Fifty thousand dollars, ($50,000) damages, which sum is still due your petitioner, no part thereof having been paid, and which sum or such reasonable compensation for the use by the United States of your petitioner's said inventions as this Honorable Court may find to be due your petitioner, your petitioner avers he is fully entitled to recover from the United States, after allowing all credits and offsets.

XI. That your petitioner's said claim for compensation for the use of his said invention is not based on the use by the United States of any article, apparatus or method owned, leased, used or in the possession of the United States prior to June 25, 1910.

[fol. 9] XII. That your petitioner has not sold or transferred his said claim or any part of the same to any person or persons; that no action has been taken on this claim in Congress or in any of the departments; that your petitioner has not in any way voluntarily aided, abetted or given encouragement in rebellion against the Government of the United States.

XIII. That the facts stated in this petition are true.

Wherefore your petitioner prays judgment in his favor against the United States, for the sum of Fifty thousand dollars ($50,000) and for such other and further relief as to the Court may seem just.

Harry F. Waite. O. Ellery Edwards, Woolworth Building, New York City, Attorney and of Counsel for Petitioner.

[fol. 10] *Duly sworn to by Harry F. Waite. Jurat omitted in printing.*

[fol. 11] II. General Traverse—Filed August 28, 1922

No demurrer, plea, answer, counterclaim, set-off, claim of damages, demand, or defense in the premises, having been entered on the part of the defendant, a general traverse is entered as provided by Rule 34.

III. History of Proceedings

On November 4, 1926, this case was argued and submitted on merits by Mr. O. Ellery Edwards, for plaintiff, and by Mr. John S. Bradley, for defendant.

On December 20, 1926, the court filed tentative findings of fact and set same for hearing on February 7, 1927.

On February 15, 1927, the case was argued and submitted on tentative findings of fact by Mr. O. Ellery Edwards, for the plaintiff, and by Mr. John S. Bradley, for defendant.

On May 2, 1927, the court filed special findings of fact, conclusion of law, and opinion of the court by Booth, J., which are as follows:

[fol. 12] **Special Findings of Fact, Conclusion of Law, and Opinion of the Court by Booth, J.**—Filed May 2, 1927

This case having been heard by the Court of Claims, the court, upon a stipulation of facts signed on behalf of the plaintiff by O. Ellery Edwards, his attorney, and on behalf of the defendant by Assistant Attorney General Robert H. Lovett, and the evidence, makes the following

Special Findings of Fact

I

The plaintiff is a citizen of the United States, residing in the State of New York. He is the president and active managing head of the Waite & Bartlett Manufacturing Co., a corporation duly organized under the laws of the State of New York, and owns the controlling interest therein.

This company is and was his exclusive licensee under his patents here in suit since their issue dates.

II

On October 6, 1917, the plaintiff filed in the United States Patent Office an application for letters patent on certain stated improvements in X-ray systems. Upon this application letters patent No. 1343599 were issued to him June 15, 1920, and the title to the patent therein allowed remains in him. A copy of the file wrapper and contents is in the case as defendants Exhibit No. 6 and is by reference thereto made a part of this finding. A copy of the specifications of said letters patent with annexed drawing is attached to these findings as Appendix No. 1 and made a part hereof by reference.

III

At the time the said application for letters patent was filed there were in the art prior thereto inventions or systems disclosed by the following patents and publications, hereby made a part of these findings by reference:

United States patent 1012326, December 19, 1911, electro-therapeutic apparatus, to Campbell.

United States patent 1122011, December 22, 1914, process and apparatus for producing Roentgen rays, to Lilienfeld.

[fol. 13] British patent 7869, A. D. 1915, published January 13, 1916, improvements in or relating to Röntgen tube apparatus, to Burdon.

United States patent 1182291, May 9, 1916, rectifier, to Meikle.

United States patent 1195632, August 22, 1916, circuit connections of electron-discharge apparatus, to White.

United States patent 1203495, October 31, 1916, vacuum tube, to Coolidge.

United States patent 1211091, January 2, 1917, cathode ray device, to Coolidge.

Article on Tungar rectifier, General Electric Review of March, 1917.

In the same art there were also the following patents granted on applications filed before October 6, 1917:

United States patent 1291379, January 14, 1919, thermionic converter, to Birdsall.

United States patent 1250731, December 18, 1917, X-ray system, to Waite (plaintiff herein).

Prior to the granting and issuing of the said Waite patent No. 1343599 the type of X-ray systems which had been in use or were in use were as follows:

1. The induction coil system using a gas tube. This is the first X-ray system which has been used since 1895.

2. The induction coil system was followed by the Snook system shown in the Snook patent No. 954056 of April 5, 1910. This also used a gas tube.

3. A later advance in the art, of great importance, was the introduction of the Coolidge tube shown in the Coolidge patents No. 1203495, No. 1211091 and No. 1326029 and plaintiff's Exhibit 25. Here a vacuum in the tube was made much higher than any before in use, and no reliance was placed on the atmosphere in the tube for X-ray generation, a hot cathode heated by an independent current being relied upon for the purpose of electron discharge. This tube employed a special cathode heating current and means for supplying the same which means was either a step-down transformer or a storage battery. This tube was supplied with an X-ray generating current from a step-up transformer which was separate from the step-down transformer or storage battery, but connected thereto so that both were charged with high potential. This Coolidge tube came into use in 1913.

None of these prior art structures was used in the advanced hospitals and dressing stations during the World War near the firing line.

Copies of the specifications and drawings annexed thereto of the foregoing nine patents and copy of the said article on the Tungar rectifier are attached to these findings and designated Appendix No. 2.

IV

The claim made and allowed in said letters patent No. 1343599 is stated therein by the plaintiff as follows:

"An X-ray system composed of an X-ray tube with a hot cathode and an anode, a transformer unit with a single

primary and a secondary composed of two sections, one [fol. 14] having a few turns of coarse wire suitable for the cathode heating current, and the other having many turns of fine wire suitable for the X-ray generating current, three wires conecting the X-ray tube and the secondary, two of which connect the coarse wire with the hot cathode and one of which connects the fine wire with the anode, and means for supplying the primary with a suitable electric current."

V

On August 10, 1920, the plaintiff filed in the United States Patent Office an application for letters patent for an automatic clamp for bracket supports, upon which application letters No. 1371011 were issued to him on March 8, 1921. The title to this patent remains in him. A copy of the specifications thereof and annexed drawings is attached to these findings as Appendix No. 4.

VI

At the time of the filing of said application August 10, 1920, there were in the art prior thereto the following United States patents:

No. 375031, December 20, 1887, fire escape, to Westbrook;

No. 833167, October 16, 1906, lampstand, to Hughes;

No. 902949, November 3, 1908, scaffold, to Dibler;

No. 1174051, March 7, 1916, harness hook, to Buland.

Copies of the specifications and annexed drawings, of the foregoing four patents, are attached to these findings as Appendix No. 5.

VII

The claims made by the plaintiff and allowed in Letters Patent No. 1371011, for automatic clamp for bracket supports, are as follows:

"1. A device of the class described, a vertically disposed spindle, a pair of forks with rollers mounted therein, means for holding said forks in rigid relation to each other, a clamp having two parts, springs adapted to separate said parts, a lever with cams adapted to bring said parts together, and a spring stronger than the springs separating the clamp, which is adapted to actuate the lever and cause it to force the two parts of the clamp toward each other.

"2. A device of the class described, a vertically disposed spindle, a pair of forks with rollers mounted therein, means for holding said forks in rigid relation to each other, a clamp having two parts, springs adapted to separate said parts, a lever with cams adapted to bring said parts together, and a spring stronger than the springs separating the clamp, which is adapted to actuate the lever and cause it to force the two parts of the clamps toward each other, and means for counterbalancing the weight of the forks and connected parts which move with them."

VIII

The device made by the Wappler Electric Co. under the contract mentioned in Finding XIV, for holding in place the bracket support on which was to be mounted the X-ray [fol. 15] tube, was of the kind and character described in Letters Patent No. 1371011, issued to the plaintiff, with the following differences: There were no springs adapted to separate the two parts of the clamp; in the place of cams the lever was provided with toggles which were adapted to separate the said parts of the clamp as well as bring them together, and had a spring of indefinite strength, which was adapted to actuate the lever and cause it to force the two parts of the clamps toward each other. This device is illustrated by plaintiff's Exhibit 13, made a part of this finding by reference.

IX

On November 20, 1920, the plaintiff filed in the United States Patent Office an application for letters patent for a vertical fluoroscopic unit. Upon this application Letters Patent No. 1420395 were granted June 20, 1922, and the title to the patent remains in the plaintiff. A copy of the specifications and drawing annexed thereto is attached to these findings as Appendix No. 6.

X

At the time of the filing of said application, November 20, 1920, there was in the prior art the invention shown by United States Letters Patent No. 1285283, for Röntgenoscope, issued November 19, 1918, to McClintock. A copy of

the specifications and drawings thereto annexed of the McClintock patent is attached to these findings as Appendix No. 7.

XI

The claims made by the plaintiff and allowed by the Commissioner of Patents in said Letters Patent No. 1420395 for vertical fluoroscopic unit are as follows:

"1. In a device of the class described, a hot cathode tube for generating X-rays, a fluoroscopic screen adapted to receive said rays, means for causing the fluoroscopic screen and X-ray tube to be raised or lowered together or be supported in a stationary condition at the same level, a control for regulating the quantity of X-ray generation which extends adjacent to the screen and which is supported by the means for supporting the X-ray generating tube.

"2. In a device of the class described, a fluoroscopic screen and means for supporting the same, an X-ray tube adjacent to said screen and means for supporting the same, means for keeping the screen and X-ray tube at corresponding levels, a rheostat carried by said tube supporting means and a rheostat regulating means carried by said tube supporting means with a part always adjacent to said screen whereby the quantity of X-ray generation may be controlled by an operator holding the screen and without moving his body."

XII

The device made by the Wappler Electric Co. under the contract mentioned in Finding XIV for a fluoroscopic unit was of the kind and character described in Letters Patent No. 1420395, issued to the plaintiff.

[fol. 16]

XIII

During the war with Germany the plaintiff conversed with John S. Shearer in the interest of the defendant with regard to some sort of a portable X-ray apparatus for the Army, and this occurred right after Lt. Col. John S. Shearer was appointed at the school of instruction, Cornell Medical School, New York City, New York. Colonel Shearer was an eminent scientist temporarily in the em-

ploy of the United States Army. Doctor Waite and Colonel Shearer talked over the various types of apparatus that were available at that time, but there were none such as Colonel Shearer felt were required for overseas Army service, so that Doctor Waite thereafter conducted a series of experiments with a view to making an apparatus that would fill Colonel Shearer's requirements, and the system of the patent in suit No. 1343599 is the result of Doctor Waite's experimental work. Colonel Shearer approved this system. A number of such units were manufactured by the Waite & Bartlett Manufacturing Co. and delivered to the United States Army during 1917 and 1918 upon contracts with the defendant. Colonel Shearer knew of the application from which this patent developed as early as November 4th, 1919.

XIV

On June 28, 1921, the Wappler Electric Co. entered into a contract with the United States to furnish and deliver thereto, among other things, 50 fluoroscopes, vertical, United States Army type; 50 transformers, improved bedside type; and 50 universal X-ray units, at $249, $97, and $399 each, respectively, all to be according to specifications which were attached to and made a part of the contract, and which provided that said articles were "to be constructed as per standard sample on exhibit at Cornell University, Ithaca, N. Y."

The contract also provided as follows:

"Article IX. The contractor will hold and save the United States, its representatives, and all other persons acting for its agent, contractor or otherwise, harmless from all demands or liabilities for alleged use of any patented or unpatented invention, secret process, or suggestion in, or in the making or supplying of the articles or work herein contracted for, and for alleged use of any patented invention in using such articles or work for the purpose for which they are made or supplied, and if and when required, will discharge and secure the United States from all demand or liability on account thereof by proper release from the patentees or claimants, but if such release is not practicable, then by bond or otherwise, and to the satisfaction of the Surgeon General of the Army."

A certified copy of the aforesaid contract is filed as defendant's Exhibit 27 and is made a part of this finding by reference thereto.

XV

Work upon the contract was immediately started by the Wappler Electric Co. and delivery of the finished articles described therein completed on or about June 15, 1922. The transformer made thereunder by the Wappler Electric Co. is described as follows:

[fol. 17] A single primary winding is carried on a suitable core and adapted to be traversed by the ordinary 110-volt alternating current. Wound upon this primary are two secondary coils, each composed of many thousand turns of fine wire, said secondary coils being connected in series and constituting in effect a single secondary winding, the number of turns of the secondary winding being proportioned to give the desired high voltage for the X-ray generating current. For generating the heating current two separate and distinct coils are used, each composed of a few turns of relatively coarse wire, wound upon the secondary coils, and are known in the art sometimes as tertiary coils. One of the tertiary coils is used at a time, the other being held in reserve in case of a breakdown.

The said transformer is illustrated in Appendix No. 3 to these findings.

XVI

After the war was over, the Surgeon General's Office appointed Lt. Col. Shearer to use his knowledge in the developing, for field service work, apparatus that would be an improvement, if possible, over the defendant's equipment at that time. Dr. Waite was asked by the Surgeon General's Office whether he would be willing to work with Col. Shearer in the perfecting of such equipment and this Dr. Waite agreed to do. He designed, built, and submitted to Col. Shearer apparatus which, in the opinion of Dr. Waite, conformed to Col. Shearer's requirements. Col. Shearer told Dr. Waite what he would like to do, and Dr. Waite's part consisted in designing and making apparatus that would fulfill the defendant's requirements to the best advantage. Within the course of this work, Dr. Waite de-

signed a special clamping device for the tube stand which prevented the tube from falling due to any carelessness on the part of the operator. Dr. Waite applied for a patent upon this device and this developed into a patent which is patent in suit, plaintiff's Exhibit No. 2, No. 1371011. Col. Shearer was fully informed as to this patent and the application from which it developed.

XVII

The device described in Letters Patent No. 1420395, applied for November 20, 1920, granted June 20, 1922, was designed by the plaintiff independently of his Army work.

XVIII

In October, 1920, the Waite and Bartlett Manufacturing Co. completed the making of a sample X-ray outfit of the kind and character determined by the plaintiff and shipped the said outfit to Lieut. Col. John S. Shearer, at Cornell University, Ithaca, New York. This outfit consisted of two transformers, the vertical fluoroscope, one bedside unit, a photograph of which is in evidence as plaintiff's Exhibit 21, which is made a part hereof, by reference, and certain other articles not necessary to enumerate here. These de- [fol. 18] vices constituted the samples which were copied in the latter manufacture of the Wappler apparatus and were the samples referred to in the contract specifications as the "standard samples" on exhibit at Cornell University, Ithaca, N. Y. (Finding XIV.) Col. Shearer had nothing to do with the designing or manufacturing of these samples, further than set forth in Findings XV and XVI. He had the power to accept or reject the same and he elected to accept them.

XIX

About two months before the defendant sent out its proposals for bids the plaintiff knew that the said devices shipped to Lieut. Col. Shearer, at Ithaca, were to be the basis of Government contracts for quantity manufacture of X-ray outfits. Prior to that time plaintiff did not know that the Government would use this apparatus.

XX

On June 16, 1921, the defendant issued its proposal for bids for the manufacture and delivery of the said outfits. The Wappler Electric Co. and the Waite & Bartlett Manufacturing Co. were among those receiving the proposals. In order that the Wappler Electric Co. might make an intelligent bid it was necessary for its agent to go to Ithaca, since the specifications were not fully disclosed in writing in the proposal, but had to be ascertained from the said samples manufactured by the Waite & Bartlett Manufacturing Co. and on exhibition at Ithaca as aforesaid. The vice president of the Wappler Electric Co., Charles Fayer, inspected the sample apparatus there, was informed by the said Shearer that it was developed in his laboratory for the United States Army, and did not know and was not informed that it had been manufactured by the Waite & Bartlett Manufacturing Co. or had in any measure been designed by the plaintiff. There was nothing on the apparatus to indicate the name of the manufacturer or that letters patent thereon had been applied for or allowed, and the said Fayer did not know of any such patent or application therefor. Such marks were ordered on each apparatus. Why they did not appear is not disclosed. Col. Shearer, who was acting for the United States, knew of plaintiff's patent and was fully acquainted with the plaintiff's rights.

XXI

The bids were opened in due course, and it was found that the Wappler Electric Co. had underbid the other bidders, including the Waite & Bartlett Manufacturing Co. Mr. Holman, secretary of the Waite & Bartlett Co., was present and made a memorandum from the several bids. The contract was thereafter awarded to the Wappler Electric Co.

XXII

After the said contract had been entered into between defendant and the Wappler Electric Co. June 28, 1921, the [fol. 19] following correspondence passed between the said company and the Waite & Bartlett Manufacturing Co.:

January 12, 1922.

Wappler Electric Co., Long Island City, N. Y.

GENTLEMEN: We understand that you are infringing the following patents: 1343599, 967469, 1371011, 1400333.

We might also call your attention to the fact that we have an application pending on the mounting of the filament control on the same carriage with the tube and arranged so that it can be controlled same as the shutter is controlled.

Yours very truly, Waite & Bartlett Manufacturing Co.

Dr. HFW:MEM.
Registered mail.

February 4, 1922.

Waite & Bartlett Mfg. Co., 53 Jackson Avenue, Long Island City.

GENTLEMEN: This is in reply to your letter of January 12th.

Will you kindly give us specific instances in which we are supposed to be infringing upon the four patents mentioned in your letter and oblige,

Very truly yours, Wappler Electric Co. (Inc.).
(Signed) A. Mutscheller.

Dr. AM ER.
Registered.

February 6, 1922.

Wappler Electric Co., 162-184 Harris Avenue, Long Island City, N. Y.

Attention of Dr. A. Mutscheller

DEAR SIR: In reply to your letter of February 4th would say, that you have accepted a contract with the Government to deliver vertical fluoroscopes and the new model U. S. Army bedside unit.

Patent 1343599 covers the specified construction of the transformer to be used in the Bedside. Patent 1371011 covers the automatic clamp on the tube stand. Patents 1400333 and 967469 cover the vertical fluoroscope.

We also desire to call your attention to the fact, that your portable X-ray outfit infringes our patent 1277003.

Yours very truly, Waite & Bartlett Mfg. Company.

Dr. HFW:MEM.

June 23d, 1922.

Wappler Electric Co., Harris Avenue, Long Island City.

GENTLEMEN: I call your attention to my following patents: Nos. 1343599, 1371011, 1400333, 1420395.

Yours very truly, Waite & Bartlett Mfg. Co.

Dr. W. B.

[fol. 20] July 5, 1922.

Dr. Harry Waite, % Waite & Bartlett Mfg. Co., 53 Jackson Ave., L. I. City.

DEAR SIR: We have received your letter of June 23rd, in which you call our attention to some patents. We are asking our attorney to look into this matter, as it is not our intention to infringe anyone else's patents.

Thanking you for the information given, we are

Very truly yours, Wappler Electric Co. (Inc.). A. Mutscheller.

Dr. AM, HG.

XXIII

The following statement of facts has been stipulated between the parties to this suit by their attorneys, signed on behalf of the plaintiff by O. Ellery Edwards and on behalf of the defendant by Robert H. Lovett, Assistant Attorney General, and is adopted by the court as part of its special findings of fact herein:

"1. That the mechanisms incorporated in the 'standard samples' referred to in contract between the United States and the Wappler Electric Company, dated June 28, 1921, defendant's Exhibit 27, were brought and paid for by the United States.

"2. That the fifty universal X-ray units, commonly referred to as 'bedside units,' were upon receipt by the United States from the manufacturer, the Wappler Electric Company, unpacked, completely assembled, tested to ascertain that they were in operative condition, and then immediately disassembled and repacked, and, with the exception of one unit, are still in storage in disassembled condition.

"3. That one of said beside units was later shipped to the Army Medical School at Walter Reed Hospital, where it was assembled and tested for about one month to determine its suitability for Army requirements. Although it operated satisfactorily up to its limitations, a more powerful apparatus was considered more suitable. Therefore, it has not been used since the month of test referred to, save for occasional operations in connection with the instruction of students at the school.

"4. That the fifty fluoroscopes referred to in said contract between the United States and the Wappler Electric Company were received by the United States in a disassembled condition from the manufacturers and, with the exception of one, have never been unpacked, the transformers thereof being simply removed from their packing cases, tested to ascertain that they were in operative condition and then immediately repacked. They have remained in storage disassembled ever since with the exception of the one fluoroscope already referred to.

"5. That one of the said fluoroscopes was later shipped to the Army Medical School at Walter Reed Hospital, where it was assembled and tested. With the exception of this test this fluoroscope has been used only two or three times while repairs were being made to the hospital, when it was more convenient to use than the regular equipment."

[fol. 21] XXIV

Prior to the plaintiff's operation of the system of his patent in suit No. 1343599, it was the belief of persons skilled in the art that the tub of such system would burst if a high potential current, suitable for generating X rays, were turned on simultaneously with the cathode heating current.

Conclusion of Law

Upon the foregoing special findings of fact, which are made a part of the judgment herein, the court decides, as a conclusion of law, that the plaintiff is entitled to recover.

The case is remanded to the general docket with leave to either party to take testimony in conformity with the opinion herein.

OPINION

BOOTH, Judge, delivered the opinion of the court:

This is a patent suit. Infringement is alleged. The defense relied upon goes exclusively to invalidity of the patent and nonuser. The patent is No. 1343599, issued to Harry F. Waite on June 15, 1920. The patent was allowed upon a single claim, as follows: An X ray system composed of an X ray tube with a hot cathode and an anode, a transformer unit with a single primary and a secondary composed of two sections, one having a few turns of coarse wire suitable for the cathode heating current and the other having many turns of fine wire suitable for the X ray generating current, three wires connecting the X ray tube and the secondary, two of which connect the coarse wire with the hot cathode and one of which connects the fine wire with the anode, and means for supplying the primary with a suitable electric current.

An intelligent discussion of the conception of the inventor involves a review of antecedent conditions which inspired the effort and point out what the inventor was trying to do and what he did. X ray systems are old, their purpose long since disclosed; but notwithstanding their age, a necessity existed for an X ray system so constructed as to be easily portable and available for use as a bedside unit and behind the lines in time of war. Lt. Col. John S. Shearer was an eminent scientist. During the war he was appointed to the School of Instruction, Cornell Medical School, New York City. Colonel Shearer was deeply interested in securing a type of X ray system available for use by the Army. The plaintiff and Colonel Shearer discussed the question and as a result the plaintiff conducted a series of experiments looking toward the construction of a unit capable of Army use as the urgent needs of the time required. The difficulty to be overcome in existing systems was the obviation of cumbersomeness. If a new system was to be evolved, its utility revolved about a reduction of parts, a simplification in construction, and a material reduction in weight and cumbersomeness. Without going into the scientific causes or factors essential to produce X rays, it is sufficient for the case to limit observation in this

respect to the operation of the Coolidge tube. The functioning of the indispensable element is the supplying of electric current to the Coolidge tube. In the old system the flow of [fol. 22] electric current into and through the Coolidge tube was accomplished by two transformers, one of which supplied low current to the cathode and the other high voltage to the anode. The Coolidge tube exacts a low-voltage current to heat to incandescence the cathode end of the tube and an extremely high voltage for the anode end to generate X rays. This current, as previously observed, was supplied through the medium of two distinct transformers, one of which reduced or stepped down the flow of electric current and the other stepped it up.

The plaintiff conceived the idea of a single transformer capable of doing what had theretofore required two. He combined the mechanism into a single simple unit capable of easy transportation and thereby enabled the creation of an X-ray device susceptible to use wherever ordinary electric current was available. This he did by a simplification of the theretofore double system of transformation of current employed to generate X rays by the use of the Coolidge tube. True, his transformer is simple, and no claim is made for a basic patent of transformers. The claim is essentially a system patent, and the novelty of the invention is its adaptability to this single type of X-ray system employing the Coolidge tube. Instead of employing in separate units a winding of comparatively heavy wire to step down electric current and a winding of a large quantity of very fine wire to step it up, the plaintiff accomplished the same result by adding a few turns of coarse wire to the secondary of his step-up transformer, so that the secondary thereafter became double in its function—i. e., the plaintiff wound around the exceedingly fine wire used to step up the current a few turns of coarse wire to step it down, thus producing a single unit transformer of comparatively small dimensions and weight. What did this accomplish? It materially reduced, if it did not entirely eliminate, the tension dangers to an attendant operating the mechanism by means of the second separate step-up transformer. It simplified the wiring system theretofore employed and reduced to three in number the wires essential to operate the tube, and

as a final and most important result brought into being a compact and portable device capable of easy transportation and reliably available at any place or point where electric current is generated. It made the Coolidge X-ray system available as an X-ray unit behind the lines in the war, and it enabled the use of the system as a bedside unit.

The defendant does not dispute that the Waite transformer is simple, reliable, practical, safe, portable, and sufficiently powerful, claims made for it by the inventor. Neither is it contended that its use in an X-ray system is not new. The defendant challenges the validity of the patent, insisting that it is devoid of novelty. Transformers, it is said, are old. This is true. Their manner of functioning and purpose in use were well known. This too is true. From these statements the defendant deduces the conclusion "that if one wanted to make a transformer from the secondary of which is to be obtained a current of much lower voltage than that of the primary and also a current of much greater voltage than that of the primary, and if it was desired to keep the transformer as small as possible, it would be accomplished by winding the secondary first with the number of turns required for the low step-down voltage, using heavy wire because of the unavoidable increase in [fol. 23] amperage * * * Such transformers have been made and used for many years." In other words, Waite's application of a single and simple transformer to an X-ray generating tube of the Coolidge type was one suggesting itself to anyone skilled in the art and involves mechanics, not invention. A short answer is found in the demonstrated fact that, notwithstanding the Coolidge X-ray system was old, no one prior to Waite did what might have been done.

Keeping in mind that the plaintiff's patent is limited to the single system described, and claims no novelty except as a functioning element of the system, is it impossible for one to claim invention for embodying elements old in the art which, notwithstanding their known status in the scientific world, when applied to a system in a new way never theretofore adopted, enabled the use of the system to be expeditiously and safely made available for its designed creation in a way not theretofore employed? The defendant concedes that a combination of old elements into a new

machine producing a new mode of operation is patentable. What is condemned in plaintiff's patent, both in the brief and testimony of defendant's expert, is that the process of stepping up and stepping down electric current by the use of fine and coarse wires would in primary and secondary windings in a single transformer accomplish nothing new. The plaintiff does assert to the contrary. The plaintiff found an X-ray system employing the wonderful invention of Doctor Coolidge; i. e., the Coolidge X ray cathode tube. Electric current was supplied to the tube by means of two separate and distinct transformers, one to step down, the other to step up, the necessary voltage. It was, of course, in use and served a most important purpose in the medical and scientific world; but it was not adapted for use in the Army. It was cumbersome and incapable of sudden removal from place to place. The wiring was complicated, the separate units employed were heavy and detached. The Army of the United States wanted a portable system; no thought of discarding the Coolidge tube prevailed; no possibility of eliminating the factors indispensable to generate X rays. Something was to be done to preserve intact the X ray system, but simplify the mechanism and make it available where it had not been universally or uniformly available before. This is what the plaintiff did. He took the elements old in the art, combined them, it is true, as they had been combined before; but with his combination he secured a new and unique application of the power in a way not theretofore done or suggested. He made it possible to use an X ray system under circumstances and in places the system existing had been excluded from. This, we think, narrow and limited as it is, was invention. It was not the invention of a transformer; it was the original idea of taking what was in the art and adapting it to a new purpose in a novel way.

We need not dwell upon the beneficial results which followed the use of plaintiff's device in connection with the X-ray system. It was used in the war most beneficially, and it is being used by the Army to-day. We have no doubt upon the subject of user. The defendant's alleged modification is not sufficiently distinct to differentiate the two transformers. The plaintiff's patent was sufficiently broad

to cover all structures coming within his claim. The findings show that the defendant used the patent in suit and [fol. 24] used it to very great advantage. The two separate transformers were discarded and the defendant has found the new Coolidge X ray system with the plaintiff's transformer to be one adaptable to its needs and occupying a place the old system did not meet.

We do not go at length into the prior art. The findings afford an opportunity for its review. The single claim of the patentee and the acknowledged limitations of his patent circumscribe the inquiry. The exhibits filed and considered unmistakably disclose that prior to the plaintiff's patent the Coolidge X ray system functioned by the use of and depended upon a single step up transformer for supplying current to the anode and another step-down transformer for voltage to the cathode. And no exhibit appears in the record of a combined transformer suitable to or adaptable to use with a Coolidge tube X-ray system, except the patent in suit. So far as the prior art is involved, we feel confident in the assertion that no single transformer appears of record to have the windings necessary to use in a Coolidge X ray system.

A doubt existed as to compliance by the patentee with R. S. section 4900, as amended by the act of February 7, 1927, requiring the marking and giving notice of patents. The parties were required to furnish additional briefs upon this point. We now believe that even in the absence of markings that the United States was fully advised and possessed knowledge of plaintiff's patent. Doctor Shearer knew of plaintiff's patent at the time he exhibited the patent to prospective bidders, and in addition to this he assembled the parts of the patent and was fully cognizant of the existence of plaintiff's rights. The testimony does disclose that the plaintiff gave instructions to mark the patent, but it was not done. On the other hand, the representative of the successful bidder to manufacture for the Government the patent in suit does not expressly disclaim knowledge of the existence of the patent. It is impossible to conclude that any injury was done because of the absence of the markings. This is a suit against the Government, and notice to the Government of plaintiff's patent rights is clearly established.

Two other minor patents are declared upon. Plaintiff does not insist upon them if sustained as to patent 1343599. If patents No. 1371011 and No. 1420395 are relied upon as augmenting damages as for infringement, we think both have been anticipated by the prior art, and that as to No. 1371011 the defendant did not use it.

The case will be remanded to the general docket in accord with the agreement of the parties, with leave granted to take such proof as the agreement provides for respecting damages. It is so ordered.

Moss, Judge; Graham, Judge; Hay, Judge; and Campbell, Chief Justice, concur.

[fol. 25] V. Argument and Submission of Case as to Amount Recoverable

On January 14, 1930, this ca[illegible] was argued and submitted by Mr. O. Ellery Edwards, for plaintiff, and by Mr. Percy M. Cox, for defendant.

[fol. 26] **Special Findi[illegible]s of Fact, Conclusion of Law, and Memorandum by the Court** - Filed February 10, 1930

This case having been heard by the Court of Claims, the court upon the report of a commissioner and the evidence makes the following

Special Findings of Fact

I

A summar[illegible] of th[illegible] bids under which the contract for vertical fluorescents, transformers, and universal units was awarded to the Wappler Company is as follows:

Item	Waite & Bartlett Co	Wappler Co	Victor Co. (a subsidiary of General Electric Co.)
Vertical fl[illegible] rescents	$311.00	$245.00	$260.00
Tra[illegible]rmer	235.00	97.00	139.00
Univ[illegible]al	775.00	380.00	.....

II

If the Waite & Bartlett Company had been awarded the contract entered into by the Government under date of June 28, 1921, with the Wappler Electric Co., the labor and material cost per unit would have been as follows:

Item	Cost
Vertical fluoroscope	$178 89
Transformer	133 00
Universal unit	400 16

and the gross profit per unit, omitting overhead, would have been—

Item	Cost
Vertical fluoroscope	$132 11
Transformer	102 00
Universal unit	374 04

[fol. 27] The overhead of the Waite & Bartlett Company during the year of the contract was 40%. There is no evidence as to what proportion or percentage of overhead would have been allocated to the above units had the Waite & Bartlett Company been awarded the contract, and no evidence of what the net profit per unit would have been.

III

Between June 28, 1921, and June 15, 1922, the Wappler Company manufactured and delivered to the Government under the contract of June 28, 1921, or in connection therewith—

50 vertical fluoroscopes.

51 transformers.

50 Universal X-ray units with transformers.

The cost per unit, inclusive of material, labor, and allocated overhead, was as follows:

Vertical fluoroscope	$249.40
Transformer	58.05
Universal X-ray unit	353.88

The profit made per unit by the Wappler Company was as follows:

Vertical fluoroscope	$0 40 (loss)
Transformer	38.95
Universal X-ray unit	45.12

IV

The X-ray units furnished the Army by plaintiff in 1917 an 1918 were sold at a price of $400.00 per unit. The transformers used in these units were made for the Waite & Bartlett Company by a sub-contractor; some at a cost to the Waite & Bartlett Company of $100.00 per transformer, and others at a cost of $71.00 per transformer.

The total labor and material cost per X-ray unit was $215.33 with the $100.00 transformers and $186.33 with the $71.00 transformers.

V

With an overhead figure of 40 per cent of labor and material costs, the net profit made by Waite & Bartlett per unit was $98.54 in those employing the transformer costing $100.00, and $139.14 in those employing the transformer costing $71.00.

VI

The claim of the patent in suit specifies and points out, as plaintiff's invention, a combination or system comprising three elements, to wit: An X-ray tube with a hot cathode, a transformer having a single primary winding and two secondary windings, one of which functions to generate a heating current for the cathode, and three wires connecting the transformer to the tube. Such a combination of elements comprises an operative entirety, not dependent for functioning upon any specific type of tube stand, cabinet, or other accessory.

VII

The cost to Waite & Bartlett of these three elements forming the basis of monopoly of the patent in suit was as [fol. 28] follows: Tube, $80.00; transformer, $100.00 or

$71.00, and wire, $0.30. The tubes were sold to the Government at $107.00 each. Applying 10 per cent for overhead, the figure used by Waite & Bartlett in the sale of the goods manufactured by someone else, the net profit per tube was $19.00. The profit on the transformers was 50 per cent of the profit on the entire apparatus which gives a net profit of $49.27 on those costing $100.00 and $69.57 on those costing $71.00, as calculated from the net profits of Finding V. This gives an average net profit of $59.42 per transformer.

VIII

A profit of approximately 100 per cent of the cost is indicated in the last two figures given in Finding VII. Using this figure as the basis for the profit on the wire connecting the transformer to the tube, the profits on the three elements of Finding VII are as follows: Tube, $19.00, wire, $0.30, and transformers $49.27 or $69.57, giving a total net profit of $68.57 on the transformers costing $100.00 and $88.87 on the transformers costing $71.00.

IX

The milliampere meters which formed a portion of the entire X-ray unit referred to in Finding IV were of stock or standard construction capable of utilization on other electrical devices wherever it was desired to measure current of the same values as those used in the X-ray unit.

The entire value of the X-ray unit referred to in Finding IV is not predicated upon the Waite patent No. 1,343,599.

X

The fifty universal units sold to the Government by the Wappler Company at the price of $399.00 per unit included a transformer as specified in the specifications, defendant's Exhibit 27.

XI

The reasonable and just compensation is $59.42 per transformer, which is the average net profit made by Waite & Bartlett on their previous sale to defendant in 1917 and 1918. This profit on transformers applied to the total of

51 transformers and the 50 universal X-ray units with transformers, referred to in Finding III, gives a total of $6,001.42.

Conclusion of Law

Upon the foregoing special findings of fact, which are made a part of the judgement herein, the court decides, as a conclusion of law, that the plaintiff is entitled to recover the sum of $6,001.42.

It is therefore adjudged and ordered that the plaintiff recover of and from the United States judgment in the sum of six thousand and one dollars and forty-two cents ($6,001.42).

Memorandum

This case is now before the court for the determination of a just and reasonable compensation for the infringement of Waite patent #1,343,599 by the sale of certain X-ray apparatus to defendant under a contract with the Wappler Company as set out in Finding III.

[fol. 29] The monopoly granted by the above enumerated patent relates solely to a transformer for the production of suitable currents for the operation of a Coolidge X-ray tube, which in itself is a well-known commercial product. The devices sold to the Government by the Wappler Company comprised not only transformers but in addition fluoroscope units and a universal X-ray unit which included a transformer.

Plaintiff maintains that the entire value of those various structures sold is predicated upon the Waite patent #1,343,599, and accordingly asks for compensation based upon the entire profits of the fluoroscopes and X-ray units as well as the transformers. This we can not agree to. The units sold incorporate many elements which have value and utilization aside from any specific manner of furnishing or producing exciting currents for the X-ray tube. The vertical fluoroscope comprises as its most essential element an adjustable screen for making observations and the universal X-ray unit includes electrical measuring instruments of standard construction as well as a tube-holding stand. All of these elements are capable of performing their ordi-

nary and customary function aside and apart from any given type of transformer, and the entire value of the apparatus can not be said to be dependent upon plaintiff's transformer structure.

Moreover, plaintiff in his original petition in this case relied upon two other patents, to wit: Waite patent #1,371,011 for a tube holder, and Waite patent #1,420,395 for a vertical fluoroscope unit. By the very fact of including these patents in his petition plaintiff negatives his contention that the entire value of these structures are dependent upon the one patent. The court in its opinion of May 2, 1927, stated, with reference to these other patents—

"If patents No. 1371011 and No. 1420395 are relied upon as augmenting damages as for infringement, we think both have been anticipated by the prior art, and that as to No. 1371011 the defendant did not use it."

To give plaintiff the entire profits upon all of the structures would be in effect to permit plaintiff to recover indirectly for something the court has refused him directly. We therefore hold that plaintiff is entitled to recover only for the transformers.

From Findings IV to VII it appears that in 1917 and 1918 the Waite & Bartlett Company sold X-ray structures to defendant upon which an average net profit was made of $59.42 per transformer. This is a somewhat higher figure than the net profit of $38.95 per transformer which was made by the Wappler Company. The defendant, however, was an old customer of the plaintiff and it is therefore properly deducible that the patentee, by reason of the infringement, lost the sale of the transformers sold by the Wappler Company. It is therefore proper to use such lost profits as a measure of just and reasonable compensation. Plaintiff fails to show any net profits on transformers other than those sold to the defendant in 1917 and 1918, and we are accordingly limited to the above figure of $59.42 per transformer.

Judgment for plaintiff in the sum of $6,001.42. It is so ordered.

[fol. 30] VII. JUDGMENT

At a Court of Claims held in the City of Washington on the 10th day of February, A. D., 1930, judgment was ordered to be entered as follows:

Upon the special findings of fact, which are made a part of the judgment herein, the court decides as a conclusion of law, that the plaintiff is entitled to recover the sum of $6,001.42.

It is therefore adjudged and ordered that the plaintiff recover of and from the United States the sum of Six thousand and one dollars and forty-two cents ($6,001.42).

VIII. PROCEEDINGS AFTER ENTRY OF JUDGMENT

On February 25, 1930, the plaintiff filed a motion for a new trial.

On April 7, 1930, the court entered the following order on said motion:

Order

Plaintiff filed a motion for a new trial, contending that the court erred in not allowing interest on the judgment awarded. We think it clear from authorities that interest may not be allowed. Tilghman v. Proctor, 125 U. S., 136; Goodrich Company v. Consolidated Rubber Tire Co., 251 Fed., 617. It is ordered, therefore, this 7th day of April, 1930, that the plaintiff's motion for new trial be and the same is overruled.

[fol. 31] Clerk's certificate to foregoing transcript omitted in printing.

Endorsed on cover: File No. 35,010. Court of Claims. Term No. 103. Harry F. Waite, petitioner, vs. The United States. Petition for writ of certiorari and exhibit thereto. Filed May 7, 1930. File No. 35,010.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 13, 1930.

The petition herein for a writ of certiorari to the Court of Claims is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.